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1 "Answer: One twenty or one thirty.

2 "Question: What was she wearing at the time of this
3 robbery and homicide?

4 "Answer: Orange jacket and the scarf on her head,
5 and she had bluejeans on and pink Reebok.

6 "Question: I am now going to show you an Elizabeth
7 Police Department photo array containing six black females. I
8 am going to ask you if you recognize any one of those photos. ✓

9 "Answer: Number three.

10 "Question: I am now going to ask you to sign the
11 back of the photo and place today's date. Are you willing to
12 do so?

13 "Answer: Yes.

14 "Question: Can you describe Renee to me?

15 "Answer: Light-skinned, about my height, big eyes, ✓
16 about five ten, about one thirty or one forty.

17 "Question: What was she wearing at the time of this
18 homicide.

19 "Answer: Black jeans, Tomy Hilfiger, and she had it
20 turned outside in. The color was black, red, and white. And
21 she is twenty or twenty one.

22 "Question: How long have you known her?

23 "Answer: Not too long.

24 "Question: To your knowledge, do you believe this
25 gun -- where do you believe this gun is at right now?

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1 "Answer: I don't know. Antwan might have it." ✓

2 Q. Let me stop you, detective.

3 You indicated that the names April and Renee Diggs came up
4 for the first time in the written statement?

5 A. Yes, sir.

6 Q. And you showed, according to the statement, a photo
7 array of each of the women?

8 A. Yes.

9 Q. How was that accomplished?

10 A. As I was doing that Detective Keith White was also in our
11 office and he was assisting me during this investigation, and
12 he made one photo array of April Diggs from the juvenile bureau
13 and he made the second photo array of Renee Diggs and he got
14 that from the identification bureau.

15 Q. And this was being done while you were continuing with
16 the statement by someone else?

17 A. Yes, sir.

18 Q. Then he came in and gave you the photo arrays?

19 A. Yes, sir.

20 Q. Please continue.

21 A. "Question: So the boy you told --

22 "Question: So the boy you told us came from
23 Carteret had nothing to do with this robbery, is that correct?

24 "Answer: Yes.

25 "Question: And there is no boy from Carteret

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1 involved in this robbery, that you know of?

2 "Answer: No.

3 "Question: The only people involved in this robbery
4 are the four of you that night.

5 "Answer: Yes.

6 "Question: Before we complete this statement I want
7 to show you a Union County Sheriff's Office photo
8 identification folder containing the photos of six black males.
9 I am going to ask you if you recognize Antwan in these photos.

10 "Answer: Yes. Number four.

11 "Question: Who is is that?

12 "Answer: Antwan.

13 "Question: I am going to ask you to place your
14 signature on the back of this photo you identified.

15 "Answer: Same complies.

16 "Question: I am also going to ask you to place your
17 initials on the remaining five photos.

18 "Same complies.

19 "Question: I am now going to show you an Elizabeth
20 Police Department photo array containing the photos six black
21 females. Do you recognize Antwan in these photos?

22 "Yes. Number five.

23 "And who is that?"

24 Q. Does it say recognize Antwan or anyone?

25 A. I am sorry. It's Anyone.

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1 "And who is that?

2 "Answer: Renee.

3 "Question: I am going to ask you to place your
4 signature and date on the back of the photo you identified.

5 "Answer: Same complies.

6 "Question: Is there anything else you wish to add
7 to this statement?

8 "Answer: No.

9 "Question: From the time that you left your last
10 written statement to this time how were you treated by members
11 of the Elizabeth Police Department?

12 "Answer: Okay.

13 "Question: After you and your mother read the
14 statement over and find it to be true and correct are you
15 willing to sign it in your own handwriting?

16 "Answer: Yes."

17 Q. And at that point in time is Mr. Mathis given an
18 opportunity to read over that statement?

19 A. Yes, he is.

20 Q. And apparently he made the one change only where he
21 wrote in Yes and then initialed that?

22 A. That is correct.

23 Q. And was an oath administered to him prior to him
24 signing this statement?

25 A. Yes, it was.

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1 Q. And that was by notary Lydia Martinez?

2 A. Yes, it was.

3 Q. Whose signature appears here?

4 A. Marvin Mathis.

5 Q. Whose signature appears here?

6 A. Lydia Martinez.

7 Q. Whose signature appears under Marvin Mathis'?

8 A. Linda Mathis'.

9 Q. Whose signature appears here?

10 A. That's mine.

11 Q. And was Miss Mathis there for that entire statement?

12 A. Yes, she was.

13 Q. Throughout any of your contact with Mr. Mathis, were
14 any force, threats or coercion used on him in any way, shape,
15 or form?

16 A. No, sir.

17 Q. Was everything voluntary, voluntarily done as far as
18 you are aware?

19 A. Yes, sir.

20 Q. Now, there was an indication there that Renee Mathis
21 had on a Tomy Hilfiger jacket that was red, white, and blue or
22 red white and black, and it was turned inside out?

23 A. Yes, sir.

24 Q. The next day, on January 25th, 1996, did you
25 participate in the arrest of April Diggs and Renee Diggs?

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1 A. Yes, I did.

2 Q. And the basis for arresting of the women, April and
3 Renee Diggs, came from the statement of Marvin Mathis?

4 A. That is correct.

5 Q. And that was the only person who had provided any
6 information to the police up to that point as to the
7 involvement of each of these women?

8 A. That is correct.

9 Q. You had court authorized arrest warrant for Renee and
10 April Diggs?

11 A. Yes, sir.

12 Q. As well as Antwan Harvey?

13 A. Yes, sir.

14 Q. That was based on information provided by Marvin
15 Mathis in the statement that you read here?

16 A. Yes, sir.

17 Q. In that statement Marvin Mathis indicates that April
18 Diggs was wearing Reeboks?

19 A. Yes, sir.

20 Q. Were those subsequently found and located?

21 A. Yes.

22 Q. Did you take those to corroborate the statement to
23 show that they were Marvin's words?

24 A. Yes, I did.

25 Q. Did you know about the pink sneakers before Marvin

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1 mentioned them?

2 A. No, sir, I did not.

3 Q. I am going to show you what has been previously marked
4 S-30 for identification. I ask you to look at it. Do you
5 recognize that?

6 A. Yes.

7 Q. What is that?

8 A. These are the pink sneakers belonging to April Diggs which
9 came into my possession on 1/25/96.

10 Q. Now I am going to show you what has been marked S-27
11 for identification. I ask you to look at it. Do you recognize
12 it?

13 A. Yes, I do.

14 Q. What is this item?

15 A. This is the coat that was worn by Renee Diggs that came
16 into my possession 1/25/96. This label was placed by me.
17 That's my handwriting with case number.

18 Q. This was the one described by the defendant I think he
19 said red, white and black?

20 A. Yes.

21 Q. He said that it was turned inside out?

22 A. That's correct.

23 Q. And, again, turning this inside out would hide the
24 colors of red and white?

25 A. Yes, sir.

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1 Q. And, again, prior to the defendant telling you that
2 this was what Renee Diggs was wearing at the time, did you or
3 the police have any information as to that?

4 A. No, I did not.

5 Q. So this would corroborate what the defendant said --

6 A. Yes, sir.

7 Q. -- in that regard.

8 Did you also receive or the police receive a court
9 authorized search warrant to go to 224 Third Street in
10 Elizabeth?

11 A. Yes, sir.

12 Q. And at that location was an item located that was of
13 evidentiary value?

14 A. Yes, sir, it was.

15 Q. And what was that item?

16 A. Black ski mask.

17 Q. And did you seize that?

18 A. Yes, sir.

19 Q. Showing you what is marked S-28 for identification, I
20 ask you to look at it. Do you recognize that?

21 A. Yes, sir.

22 Q. What is that?

23 A. That is the black ski mask that came into my possession
24 shortly after this homicide.

25 Q. And why is it that you chose 224 Third Street to go

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1 to?

2 A. That is the apartment of Stephen Owens, and he is a very
3 close friend of all the defendants in this case. And they were
4 there right after the shooting with the firearm.

5 Q. Was the firearm recovered at that location?

6 A. No, sir, it was not.

7 Q. Now, was a firearm recovered in this case?

8 A. Yes, sir.

9 Q. Was that recovered by you?

10 A. No, sir, it was not.

11 Q. As a detective and a police officer for twenty one
12 years, were there any bullets or casings found in this entire
13 investigation?

14 A. No.

15 Q. Was there a small fragment found at the autopsy?

16 A. Yes, sir.

17 Q. Was that suitable for any type of forensic or
18 ballistics testing?

19 A. No, sir.

20 Q. Without a bullet or casing can one ever determine that
21 a gun is the murder weapon?

22 A. No.

23 Q. Is there any way to know which gun was the murder
24 weapon in this case?

25 A. No, sir.

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1 Q. Now, from your handling this investigation from the
2 inception to today did you receive from any source whatsoever
3 in any way, shape or form a permit for Marvin Mathis to own or
4 possess a handgun?

5 A. No.

6 Q. You indicated on the day following the statement by
7 Marvin Mathis that you participated in the court authorized
8 arrest of Renee and April Diggs?

9 A. Yes, sir.

10 Q. Did you participate in the taking of a statement from
11 Renee Diggs?

12 A. Yes, sir.

13 MR. KOLANO: If I may have two items marked. First
14 statement Renee Diggs, second statement of April Diggs.

15 Q. I am going to show you what has been marked S-45 for
16 identification. I ask you to look at it. Do you recognize
17 that?

18 A. Yes, sir.

19 Q. And what is that?

20 A. This is the typewritten sworn statement provided by Renee
21 Diggs on 1/25/96.

22 Q. What time does this typewritten statement begin?

23 A. 12:15 p.m.

24 Q. And the statement was taken by which detective?

25 A. By myself.

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1 Q. Who was the typist for this particular statement?

2 A. Jean Butler.

3 Q. Is she also a civilian secretary in the police
4 department?

5 A. Yes, sir.

6 Q. Did you conducted an oral interview of Renee Diggs
7 prior to going to the written statement?

8 A. Yes, sir.

9 Q. And at this point she was under arrest?

10 A. Yes, she was.

11 Q. Now, from the time that she was arrested --
12 Did she and April live in the same house or same apartment?

13 A. No.

14 Q. Did they live in the same housing complex?

15 A. No. Same housing complex. Yes.

16 Q. And were they brought in together or in separate cars?

17 A. Separate cars.

18 Q. From the time that the police arrested each of them
19 were they kept separate?

20 A. Yes, they were.

21 Q. And you indicated what time that that statement began?

22 A. 12:15 p.m.

23 Q. Now, sir, I am going to ask you to look at what is
24 marked S-46 for identification. Do you recognize that?

25 A. Yes, sir, I do.

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1 Q. What is that?

2 A. This is the voluntary statement given by April Diggs. This
3 was also done in the presence of her mother Darlene. That was
4 on 1/25/96. And this statement was given to Detective Keith
5 White.

6 Q. What time did the statement begin?

7 A. Twelve noon.

8 Q. So these statements were taken, except for fifteen
9 minutes, start time, simultaneously?

10 A. Yes, sir.

11 Q. And while these women were in your presence did they
12 have any opportunity to get together to, quote, get their
13 stories straight?

14 A. No, sir.

15 Q. Did you subsequently go back to 224 Third Street in
16 Elizabeth with another search warrant?

17 A. Yes, sir, I did.

18 Q. And were you authorized to and did you receive a video
19 tape?

20 A. Yes, I did.

21 Q. And did you in fact seize many video tapes, but one in
22 particular?

23 A. Yes, sir.

24 Q. And did you receive court authorized authority to view
25 that video tape?

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1 A. Yes, sir.

2 Q. And did you in fact view that video tape?

3 A. Yes, I did.

4 Q. Without telling us the details of anything on the
5 video tape, was Marvin Mathis on the tape?

6 A. Yes.

7 MR. FLORCZAK: I object, unless they show some kind of
8 relevancy.

9 MR. KOLANO: It will show the togetherness of Antwan
10 Harvey and as well as Renee Diggs, and that they were not
11 strangers to one another.

12 THE COURT: I will overrule the objection.

13 Q. Was Antwan Harvey on the video tape?

14 A. Yes.

15 Q. Was Marvin Mathis on the video tape?

16 A. Yes.

17 Q. Was April Diggs on the video tape?

18 A. Yes.

19 Q. Was Renee Diggs on the video tape?

20 A. Yes.

21 Q. Now, detective, if I can have you step down, please.
22 Referring you to what has been marked S-42. If you can just
23 grab that end so we can pull that out, please.

24 You have never seen this document, have you?

25 A. No, I have not.

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1 Q. I want you to take a minute just to look, as a
2 detective who has worked in Elizabeth, to see if you recognize
3 generally what it represents?

4 A. Downtown area of Elizabeth, New Jersey.

5 Q. Here there is writing Portuguese American liquor store
6 709 East Jersey Street?

7 A. That's correct.

8 Q. And there is 658 South Park Street where the wallet
9 was found?

10 A. Yes, sir.

11 Q. Based on your being an officer in Elizabeth for twenty
12 one years, is this a fair and accurate depiction of the
13 relative locations?

14 A. Yes, this is.

15 Q. And here is an indication of 224 Third Street. Is
16 that where you executed the two search warrants?

17 A. Yes, sir, I did.

18 Q. Is that also a fair and accurate depiction of the
19 locations?

20 A. Yes, sir, it is.

21 Q. Would you please point out -- and there is a pointer
22 here -- since there was reference made about Elizabeth Avenue,
23 where Elizabeth Avenue is.

24 A. This is Elizabeth Avenue right here.

25 Q. Okay. And there was reference made to New Point Road.

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1 A. New Point Road is -- -- pause -- right here.

2 Q. Now, --

3 A. New Point Road, doesn't indicate, it does run up into
4 Elizabeth Avenue, to Union Square.

5 Q. Seventh Street?

6 A. Seventh Street is here.

7 Q. Seventh is here, and this is East Jersey Street?

8 A. Yes, sir.

9 Q. Okay. And is there in fact Chinese restaurant next to
10 Portuguese American liquor store?

11 A. Yes, there is.

12 Q. Alexian Brothers, is that actually a hospital?

13 A. At that time it was old Alexian Brothers, but that was
14 taken over by Elizabeth General.

15 Q. That was reference to Alexian Brothers?

16 A. Yes, sir.

17 Q. That's located?

18 A. Right here.

19 Q. Thank you.

20 THE COURT: We will take the morning recess at this
21 point. This will be a convenient place to break.

22 Ladies and gentlemen, I want to remind you not to
23 engage in any discussions among yourselves or with others
24 regarding the case. We are going to take a fifteen minute
25 break. You can leave the courtroom during that time. When you

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1 do return, assemble inside the jury room.

2 Thank you.

3 (Jury withdrew from the courtroom.)

4 (Short Recess).

5 THE COURT: Please have the jurors brought out.

6 (Jury seated in the jury box in the courtroom.)

7 THE COURT: Mr. Kolano, any additional direct
8 examination?

9 MR. KOLANO: Very briefly.

10 Q. Detective, just going back.

11 When you finished the second statement with the defendant,
12 in his mother's presence, what did you do with the statement
13 prior to him signing it?

14 A. At that time I asked both him and his mother to read every
15 page of the statement. If they understood each page of the
16 statement to place Marvin Mathis' initials at the bottom of
17 that.

18 If they see anything, any corrections, or anything they
19 felt uncomfortable with, they were to bring it to my attention.
20 If a change was to be made Marvin Mathis was to either add it,
21 change it, or place his initials alongside the correction.

22 Q. Were there any changes?

23 A. Yes, there were.

24 Q. Which ones?

25 A. On the bottom page of his second statement a question is

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1 asked: So all of four of you committed this robbery. At the
2 end of this page the letter A was omitted so Marvin Mathis
3 added the word A into it. He put the word Yes next to it, and
4 he placed his initials.

5 Q. That was the only change made?

6 A. Yes, sir.

7 MR. KOLANO: Thank you.

8 Nothing further.

9 CROSS EXAMINATION BY MR. FLORCZAK:

10 Q. Isn't it true, detective, that A and the answer Yes
11 were not omitted. They just simply appeared on the next page?

12 A. Yes, sir.

13 Q. Okay. Now, there are no corrections or additions to
14 the first statement he gave, is that correct?

15 A. No, sir.

16 Q. No, sir, there were no changes?

17 A. In the first statement there were no changes, sir.

18 Q. Thank you.

19 And on Tuesday, when we had the hearing you testified that
20 there were no changes in either statement. Is that correct?

21 A. That is correct.

22 Q. Okay. But today when you were reading it again, you
23 came across this Yes and this MM written in handwriting, is
24 that correct?

25 A. Yes, sir.

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1 Q. And that somehow refreshed your recollection?

2 A. It was only when I realized pages were in disarray did I
3 realize that I missed this part of the statement on Tuesday.

4 Q. When you said, when you testified on direct, when
5 asked about it by the prosecutor, you said, apparently Marvin
6 Mathis found this when he was reading it, and wrote in Yes and --

7 A. Sir, it was obviously, I don't know if I used apparently,
8 but it's obvious that he did.

9 Q. Isn't it true you used the word apparently and said
10 that he wrote it in because you assumed that's what happened
11 rather than actually remembering that's what happened?

12 A. Sir, I don't remember exactly which word I used.

13 Q. Well, do you actually remember this happening?

14 A. No, sir, I don't.

15 Q. Okay. So you are assuming that he was the one who did
16 it from looking at it, not from actual memory of it happening,
17 is that correct?

18 A. Sir, that's his answer, his initials. He did it. There is
19 no assumption there. He did it. He made that correction.

20 Q. You are saying this is his handwriting, this Yes?

21 A. Yes, it is.

22 Q. Other than his signature, do you have any other
23 samples of his handwriting?

24 A. Sir, right below where the word says Yes, through several
25 documents here, also his initials, and they are also his

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1 initials.

2 Q. I am not asking about the initials MM.

3 Do you have any other, other than his initials MM and his
4 signature at the end, do you have any other samples of his
5 handwriting?

6 A. Sir, MM alongside the word Yes also indicates that he made
7 that correction.

8 Q. My question -- Perhaps you didn't understand my
9 question. My question is:

10 Aside from his signature and the MMs on these pages, do you
11 have any other sample of his handwriting?

12 A. No, sir, I do not.

13 Q. Now, the question deals with whether he intended to
14 rob people. Is that correct?

15 A. Yes, sir.

16 Q. Now, your questioning started approximately 12:09 p.m.
17 on that day, is that correct?

18 A. On the first statement, sir?

19 Q. Your first questioning of this individual, Marvin
20 Mathis, when did you first start questioning him?

21 A. About the details of this case?

22 Q. Yes.

23 A. That was shortly after twelve. Yes, sir.

24 Q. It was after he signed the waiver of his rights form,
25 is that correct?

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1 A. Yes, sir.

2 Q. And that was signed approximately 12:09 p.m.?

3 A. Yes, sir.

4 Q. After that you started questioning him about this
5 incident, is that correct?

6 A. Yes, sir.

7 Q. Okay. And you asked him whether he was involved in
8 any robbery attempt, among other questions?

9 A. Yes, sir.

10 Q. And he initially told you No, is that correct?

11 A. That is correct.

12 Q. And he told you No during the oral interview before
13 the first statement was taken, is that correct?

14 A. Yes, sir.

15 Q. And at 2:30 you started taking the first statement.
16 If I can find it. Approximately 2:30 p.m. you started taking
17 the first statement from him, is that correct?

18 A. Yes, sir.

19 Q. And during that statement you asked him essentially
20 whether he was involved in robbery or knew, intended to rob
21 anyone, is that correct?

22 A. That is correct.

23 Q. And he denied it during that statement, is that
24 correct?

25 A. Yes, sir.

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1 Q. And finally, sometime around six p.m. he somehow
2 admitted being involved in the robbery, is that correct?

3 A. Yes, sir.

4 Q. So you questioned him. How many times in almost six
5 hours of questioning him did you ask him whether he was
6 involved in a robbery before he finally said Yes?

7 A. Several.

8 Q. Excuse me?

9 A. Several times, sir.

10 Q. Were there more than ten, do you know?

11 A. No, I don't know.

12 Q. And in the statement where he finally admits it
13 nowhere in the statement does he say I was involved in the
14 robbery.

15 Rather, it's a question where you used the words.

16 For instance, on page two, part of the question is, in the
17 second interview after 5:45: You stated to me in the presence
18 of your mother before the first attempted robbery and robbery
19 and homicide you intended to rob people with Antwan. Is that
20 correct?

21 In other words, you used those words, and what he has is
22 Yes, is that correct?

23 A. Yes, sir.

24 Q. And any time he admits being involved in the robbery
25 in this statement, like was it your intention, intention of

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1 Antwan, and intention of April Diggs and the other female to
2 rob anyone on Elizabeth Avenue, there was an answer Yes. In
3 other words, you used the words Was it your intention, you said
4 everything, Were you intending to rob him, he said Yes; is that
5 correct?

6 A. That is correct.

7 Q. There is nowhere in the statement where you ask him
8 Tell me what happened, he says I intended to rob someone?

9 A. No, sir.

10 Q. Now, all these answers where he says Yes, were those
11 in fact the word he used?

12 A. Yes.

13 Q. He never said Yep, he never said Sure?

14 A. These were the words he used, sir.

15 Q. He always said Yes?

16 A. Yes, sir.

17 Q. He ever just nod his head in answer to a question?

18 A. No, sir.

19 Q. So that what time did you first see Marvin Mathis on
20 the, on January 24th, 1996,?

21 A. Approximately 11:15 a.m.

22 Q. Was that at a time when you were already taking a
23 statement from Miss Brooks?

24 A. Yes.

25 Q. And you stopped taking the statement to go talk to

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1 him, is that correct?

2 A. Yes.

3 Q. And you found out where his mother was and you sent
4 for her?

5 A. Yes.

6 Q. And she was brought to the police headquarters, is
7 that correct?

8 A. Yes, sir.

9 Q. And now, your testimony that you advised him of his,
10 his constitutional rights.

11 MR. FLORCZAK: Do you have that?

12 MR. KOLANO: It may be up there.

13 Q. Do you have that form?

14 A. This is the afternoon one, sir?

15 Q. I show you what has been marked as S-1. Can you
16 identify that?

17 A. Yes.

18 Q. And that's the form where you advised him of his
19 rights?

20 A. Yes, sir.

21 Q. Can I see that, please, for a second.

22 And your manner of doing this is in the presence of his
23 mother you read this form to him, is that correct?

24 A. Both him and his mother, sir.

25 Q. You read it to them. Were you holding this when you

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1 read it to them or was it just, do you know whether it was just
2 lying in front?

3 A. Lying on the table.

4 Q. It was on the table, and he was sitting there?

5 A. Yes.

6 Q. His mother was sitting there?

7 A. Yes.

8 Q. And were you sitting there?

9 A. Yes.

10 Q. Now, at that time you knew he was fifteen years old,
11 is that correct?

12 A. Yes.

13 Q. Were you aware that he had never been arrested before?

14 A. No.

15 Q. And you started to read this form. You said Before we
16 ask you any questions you must understand your rights.

17 One, you have the right to remain silent. Do you
18 understand this?

19 You read that to him?

20 A. Yes.

21 Q. And you waited for a response from him?

22 A. Yes. And his mother.

23 Q. And his mother.

24 And then you had him put his initials there?

25 A. Yes.

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1 Q. Then you then after he put his initials down you read
2 the second part?

3 A. Yes.

4 Q. Were you reading from a separate form or the same one
5 he was signing?

6 A. Same one.

7 Q. Okay. Then, Anything you say can and will be used in
8 a court of law. Do you understand this? And he initialed it?

9 A. Yes.

10 Q. First indicating that he understood?

11 A. Yes.

12 Q. And his mother said she understood?

13 A. Yes.

14 Q. Then you asked, You have the right to talk to a lawyer
15 and have him present while you are being questioned. Do you
16 understand this?

17 And, again, they both indicated they did?

18 A. Yes.

19 Q. Did they verbally indicate it or --

20 A. Yes.

21 Q. And he initialed it.

22 Then you said, You can decide at any time to exercise these
23 rights and not answer any questions or make any statements. Do
24 you understand this?

25 Again, they said they understood, and they initialed it?

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1 A. Yes.

2 Q. Then you read the waiver part?

3 A. Yes.

4 Q. And then you had him sign it and the mother signed it,
5 and you signed it, and then you put the time down, is that
6 correct?

7 A. Yes.

8 Q. So this entire advising him of the rights took between
9 12:07 and 12:09 p.m.?

10 A. Yes.

11 Q. Two minutes. Did you ask him at any time or his
12 mother to, when they said they understood any rights to explain
13 what that right meant?

14 A. Can you repeat that, sir. ✓

15 Q. Did you ask them to explain at any time what the right
16 was that they said they understood?

17 A. We did not go on to each right until they totally
18 understood each right, sir.

19 Q. My question is: Did you ask them at any time to tell
20 you or explain what that right meant?

21 A. Sir, I don't understand your question.

22 Q. Okay. When you asked them, You can decide at any time
23 to exercise these rights and not answer any questions or make
24 any statements, did they answer you, how?

25 A. We understand.

KOCZUR - CROSS BY FLORCZAK

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1 Q. All right. Did you at any time say, Can you tell me
2 what that means --

3 A. No.

4 Q. -- what I just said to you?

5 So you just assumed when they said we understand or I
6 understand that they, they actually did understand?

7 A. Yes, sir.

8 Q. Were you aware at any time that when you were
9 questioning him that Marvin was a special education student?

10 A. No.

11 Q. Before you took the second statement, --

12 Do you have that form there?

13 A. Yes, sir, I do.

14 Q. Constitutional rights form. Did you go through the
15 same process?

16 A. Yes, sir.

17 Q. You asked him the question, and they initialed it and
18 give the answer?

19 A. Yes, sir.

20 Q. How long did that take?

21 A. Only about a minute.

22 Q. So from 5:45 to 5:46 you were able to read all these
23 rights, get a response, get it initialed, and have it signed,
24 all within one minute?

25 A. Yes, sir.

KOCZUR - CROSS BY FLORCZAK

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1 Q. This wasn't a case where you just gave them and told
2 them to sign it?

3 A. No, sir, not at all.

4 Q. By the way, as a result of these statements you said
5 that April and Renee Diggs were arrested, is that correct? ✓

6 A. Yes, sir.

7 Q. So they were arrested on the 25th? ✓

8 A. Yes, sir.

9 Q. Almost three days after the incident occurred, is that
10 correct?

11 A. Yes, sir.

12 Q. So they had plenty of time to get any stories together
13 they wanted to, isn't that true?

14 A. Yes, sir.

15 Q. The first statement started at 2:30 p.m., the first
16 typewritten statement, is that correct?

17 A. Yes, sir.

18 Q. And do you recall how many pages it is?

19 Are the pages numbered?

20 A. If I may look at the report.

21 It's a nine page statement, sir.

22 Q. After the statement was completed you asked him and
23 his mother to go over the statement, is that correct?

24 A. Yes, sir.

25 Q. Did they go over the statement in your presence?

KOCZUR - CROSS BY FLORCZAK

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1 A. Yes, they did.

2 Q. Could you tell whether they were reading or whether
3 Marvin Mathis was in fact reading the statement?

4 A. He appeared to have been reading it.

5 Q. Did he make any corrections or additions to the
6 statement?

7 A. No, sir.

8 Q. Do you as a matter of practice ever intentionally put
9 mistakes in it so that they would be corrected?

10 A. No, sir.

11 Q. And at any time did you ask Marvin to read any portion
12 of it to see whether in fact he could even read the statement? ✓

13 A. No, sir.

14 Q. Now, you said that Mr. Mathis was brought to police
15 headquarters because of the statement Miss Brooks gave, is that
16 correct?

17 A. Yes, sir.

18 Q. And you initially interviewed her before taking the
19 statement --

20 A. Yes, sir.

21 Q. -- from her?

22 Did she tell you in her statement that Sharlama Brooks was
23 approached in Miglore Manor by black male who informed her that
24 Marvin Mathis was involved in this homicide. The next morning
25 at Elizabeth High School Marvin Mathis told Sharlama Brooks

KOCZUR - CROSS BY FLORCZAK

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1 that he and a friend named Antwan were walking on East Jersey
2 Street and got into an argument with the man who was taking out
3 the garbage. Marvin Mathis stated that an argument had broken
4 out, a gun was produced by Antwan, and during the struggle a
5 shot was fired.

6 A. That is correct.

7 Q. And that's what she told you?

8 A. Yes, sir.

9 Q. And Marvin told you in his first statement, in each
10 statement, that Antwan was the individual who shot the liquor
11 store owner, isn't that true?

12 A. Second statement he says he has his hands on the gun when
13 the gun went off.

14 Q. Did he say that Marvin, I am sorry, that Antwan had
15 pulled the gun?

16 A. Yes, he did.

17 Q. Pointing it at the man?

18 A. Yes.

19 Q. In fact he was trying to stop him from shooting the
20 man?

21 A. Yes.

22 Q. And then in fact in this statement after he admits,
23 says Yes to your question about being involved in intending to
24 rob people, he tells you that, number one, one robbery didn't
25 occur because he told Antwan not to do it. Isn't that correct?

KOCZUR - CROSS BY FLORCZAK

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1 A. Yes, it is.

2 Q. And then he also tells you deli robbery didn't occur
3 because he said he wouldn't do it, isn't that true? ✓

4 A. That is correct.

5 Q. And then after these incidents when they are
6 approaching the Chinese store he also told you -- you asked him
7 Was it your intention at this time to continue doing the
8 robbery, and his answer was No. ✓

9 On page four toward the bottom of the page.

10 A. That is his answer, correct.

11 Q. And this, this is seven, 7:30, probably, statement
12 started 6:50?

13 A. About that time, yes.

14 Q. Approaching eight o'clock, this is eight hours after ✓
15 you started questioning him. Isn't that correct?

16 A. Approximately. Yes.

17 Q. And you indicated in your statement taken from Miss
18 Mathis that from time to time during the questioning she left
19 the room, is that correct?

20 A. Yes.

21 Q. And you indicate that on one occasion that was because
22 Mr. Mathis wanted her out of the room, is that correct?

23 A. Yes.

24 Q. Can you tell us how long she was out of the room on
25 these occasions?

KOCZUR - CROSS BY FLORCZAK

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1 A. No more than a minute or two on each occasion.

2 Q. And the questioning continued on each of the
3 occasions?

4 A. Yes.

5 MR. FLORCZAK: If I may have a moment, your Honor.

6 THE COURT: Yes.

7 (Pause).

8 Q. You have a, you made an approximately fifteen page
9 report?

10 A. Yes.

11 Q. Can you tell us when that report was typed, if you
12 recall?

13 A. I have to look to see what time the typist may have put a
14 date. If I may refer to my report.

15 Q. Then I withdraw the question. When did --

16 In other words, you write it up for the the typist to type
17 it up?

18 A. Yes.

19 Q. Do you know when you wrote it up? That's the
20 important -- ?

21 A. I was writing it as we were investigating this case.

22 Q. My main concern is the part about Sharlama Brooks
23 where you write in your report she told you that Marvin Mathis
24 stated an argument broke out, a gun was produced by Antwan, and
25 during the struggle a shot was fired. Do you know whether that

KOCZUR - CROSS BY FLORCZAK

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1 was written in your report or written in your notes when it
2 occurred?

3 A. Oh not, the report wasn't written as I was investigating
4 it. I was writing notes, and short time after that then I
5 would write my report.

6 Q. In this statement from Mr. Mathis each time he
7 indicated to you that Antwan, he met Antwan on the street, is
8 that correct?

9 A. Yes, sir.

10 Q. And this other person from Carteret, this Boz, as far
11 as you know, doesn't exist, is that correct?

12 A. To my knowledge, he does not exist.

13 Q. And in fact the only person connected to Carteret in
14 this case was Antwan Harvey. That's where Mr. Harvey was
15 arrested, is that correct?

16 A. Yes, sir.

17 MR. FLORCZAK: I have nothing further. Thank you.

18 THE COURT: Mr. Kolano.

19 REDIRECT EXAMINATION BY MR. KOLANO:

20 Q. Mr. Florczak asked you about some of your testimony of
21 Tuesday of this week.

22 A. Yes, sir.

23 Q. And that was for a very limited purpose that you were
24 testifying?

25 A. Yes, sir.

KOCZUR - REDIRECT BY KOLANO

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1 Q. That did not involve going through the statement page
2 by page, line by line, did it?

3 A. That's correct.

4 Q. Speaking of that statement, did, did you do a
5 demonstration of the Miranda rights at that hearing on Tuesday?

6 A. Yes, I did.

7 Q. Came out to two minutes and ten seconds?

8 MR. FLORCZAK: Objection. That was not in evidence.

9 THE COURT: Sustained. That was not in evidence.

10 Q. Do you know how long it took for you to give a
11 demonstration to us?

12 A. Approximately two minutes.

13 Q. And how much, how long did you say it took when you
14 did it that actual day?

15 A. Approximately two minutes.

16 Q. And now when you say on your time that it started at
17 12:07 and ended 12:09 correct?

18 A. Yes, sir.

19 Q. Do you know if that was 12:09 and one second or 12:07
20 and 58 seconds?

21 A. All I was doing was approximately, sir.

22 Q. If you wanted to doctor up the document, could you
23 have put 12:07 and 12:10, or 12:11 or 12:13?

24 A. I could have? No.

25 Q. Who was there to stop you or deny you?

KOCZUR - REDIRECT BY KOLANO

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1 A. Well, Mrs. Mathis and Marvin, if they wanted to.

2 Q. So why did you put 12:07 and 12:09?

3 A. Because that's the time it started and finished.

4 Q. Along those lines, there was some questions by Mr.
5 Florczak as to whether or not you asked if the defendant could
6 read. Do you recall that?

7 A. Yes, sir.

8 Q. And he indicated to you what as to his ability to
9 read?

10 A. That he could read.

11 Q. And the statements that are contained or words that
12 are contained on the statement were they spoken by the
13 defendant?

14 A. Yes.

15 Q. Were they typed accurately by a secretary, since you
16 were there?

17 A. Yes.

18 Q. Did his mother also have the opportunity to read the
19 statements?

20 A. Yes, she did.

21 Q. Did she appear to read the statement to herself?

22 A. She did.

23 Q. Did the defendant appear to read the statement?

24 A. He did.

25 Q. Let me ask you this. If you were trying to pull the

KOCZUR - REDIRECT BY KOLANO

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1 wool over his eyes or get some incriminating statement on him,
2 why didn't you do a better job on either of the statements?

3 MR. FLORCZAK: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Why did you put in his denials in the first statement?

6 A. Because that's what he told me.

7 Q. Why did you put in the fact that he said Antwan was
8 the person who pulled the trigger in the second one?

9 A. Because that's what he told me.

10 Q. Why didn't you put that he did it?

11 A. Because that's not what he told me.

12 Q. Now, Mr., --

13 Do you have a copy of the second statement up there,
14 detective?

15 A. Yes, sir, I do.

16 Q. I am going to ask you to turn to page four.

17 Now, do you recall Mr. Florczak asking you some questions
18 about some prior robberies that were mentioned in the
19 statement?

20 A. Yes, sir.

21 Q. And Mr. Florczak brought out the point that the
22 defendant stopped or prevented Antwan from going forward on one
23 of the robberies?

24 A. That is correct.

25 Q. Did the defendant tell you why he stopped the robbery?

KOCZUR - REDIRECT BY KOLANO

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1 A. If I can refer to the report, to be accurate.

2 Q. If you need to.

3 A. Yes, I do.

4 You want me to answer the question, It was still your
5 intention --

6 Q. No. I want to you know if there is anything in there
7 whether, where the defendant says I stopped the robbery of the
8 people because -- ?

9 A. No.

10 Q. So do you have any knowledge if he stopped it because
11 it was wrong to do the robbery or because the circumstances
12 weren't right to do the robbery?

13 A. I have no way of knowing.

14 Q. He just said, he said No, and that was the end of it --

15 A. That's correct.

16 Q. -- in terms of what he told you?

17 A. That is correct.

18 Q. Did he at any time ever say no robbery because it was
19 wrong?

20 A. That's correct.

21 Q. Did he say, he said because the robbery was wrong, or
22 did he say nothing?

23 A. Nothing.

24 Q. Now, Mr. Florczak asked you a number of questions, and
25 basically said all the defendant said was yes, yes, yes in his

KOCZUR - REDIRECT BY KOLANO

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1 answers?

2 A. That's correct.

3 Q. Referring to page four, and since and this goes back
4 to the number of robberies -- am I reading accurately?

5 "Question: What happened then?

6 "Answer: Antwan saw two Spanish boys, and Antwan
7 and April started running after them real hard and me and the
8 other girl jogged after them."

9 Did I read that accurately.

10 A. Yes, you did.

11 Q. That's not a one word answer, is it?

12 A. No.

13 Q. And they ran after them. Is that -- Did I read that
14 accurately?

15 A. Yes.

16 Q. Did he say he tried to stop the robbery of the Puerto
17 Rican boys?

18 A. No.

19 Q. Spanish boys?

20 A. No.

21 Q. And then do you ask the next question, Which way did
22 they run on Sixth Street?

23 "Answer: We all went towards First Avenue, but they
24 outran us."

25 Did I read that accurately.

KOCZUR - REDIRECT BY KOLANO

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1 A. Yes, you did.

2 Q. Was that one word answer?

3 A. No.

4 Q. Are these accurate as to when I say We all went
5 towards them?

6 A. Yes.

7 Q. And they outran us?

8 A. That's correct.

9 Q. He didn't say they outran Antwan or the girls, did he?

10 A. No.

11 Q. Now, if I can ask you to turn to the next page, again,
12 you remember Mr. Florczak saying basically you only permitted
13 the defendant one word answers?

14 MR. FLORCZAK: I object to the characterization. It's
15 untrue.

16 THE COURT: Sustained.

17 Q. Do you remember Mr. Florczak asking a question where
18 basically the defendant's answers were yes, yes, yes?

19 A. That is correct.

20 Q. And am I reading this accurately:

21 "Question: What happened between you Antwan and the man
22 that was shot?

23 "Answer: We -- " Is that accurate, "We --

24 A. Yes.

25 Q. -- walked up to the guy. Antwan grabbed him and tried

KOCZUR - REDIRECT BY KOLANO

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1 going into his pockets. Then the man slapped Antwan's hand
2 from going into his pockets. Then Antwan grabbed the man and
3 the man grabbed Antwan. Then the man threw a punch at Antwan,
4 then Antwan threw a punch back at him, then Antwan pushed the
5 man off him and he took the gun and shot him."

6 Is that more than one word answer?

7 A. Yes, it is.

8 Q. Is that an answer further expounding than the word
9 Yes?

10 A. Yes, it is.

11 Q. Were these his own words?

12 A. Yes, they were.

13 Q. You asked him open ended question, and that's what he
14 said?

15 A. That is correct.

16 Q. Turn to the next page.

17 Am I reading this accurately:

18 "Question: How did the gun go off?

19 "Answer: When all three of us were struggling for
20 the gun."

21 Did I read that accurately?

22 A. Yes.

23 Q. Is that an answer that is something more than a simple
24 Yes?

25 A. You are right.

KOCZUR - REDIRECT BY KOLANO

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1 Q. Is that an open ended question, How did the gun go
2 off?

3 A. No.

4 Q. That's not?

5 A. I am sorry. It is open ended question.

6 Q. This was the defendant's answer saying that when he,
7 Antwan, and the victim were struggling for the gun it went off?

8 A. That's correct.

9 "Question: Where did you go right after the
10 shooting?"

11 Is that an open ended question, Where did you go?

12 A. No.

13 Q. It's a closed question?

14 A. Yes.

15 Q. Why is it a closed question?

16 A. Because I am allowing him to answer with either a yes or no
17 answer.

18 Q. What does he say?

19 A. Me and Antwan ran down Seventh Street, like I told you
20 before.

21 Q. And those were Marvin's words?

22 A. Yes.

23 Q. And that's something more than just a yes or no, is it
24 not?

25 A. Yes.

KOCZUR - REDIRECT BY KOLANO

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1 Q. And in the first statement he told you that after this
2 shooting robbery he and Antwan ran off together?

3 A. That's correct.

4 Q. And he is reconfirming that in this statement that he
5 ran off together?

6 A. Yes, he is.

7 Q. And it was down Seventh Street?

8 A. Yes, sir.

9 Q. So at no time did he try to distance himself from
10 Antwan Harvey, did he?

11 A. No, sir.

12 Q. Even after this robbery and shooting that he said
13 Antwan was the trigger man for he didn't get away from Antwan?

14 A. No, sir.

15 Q. And you indicated before that they all ended up at 224
16 Third Street, is that correct?

17 A. That is correct.

18 Q. So even after the shooting -- ?

19 MR. FLORCZAK: I object. I don't know where that,
20 that comes from.

21 MR. KOLANO: He testified before. That's when we got
22 to the chart.

23 MR. FLORCZAK: He testified as to --

24 This individual didn't testify as to any facts as to
25 where they ended up.

KOCZUR - REDIRECT BY KOLANO

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1 MR. KOLANO: When I asked why he did the search
2 warrant.

3 THE COURT: There was testimony as to information this
4 witness received.

5 MR. FLORCZAK: I want to be heard later.

6 I don't think there is --

7 THE COURT: You want to address that now?

8 MR. FLORCZAK: Yes, I will address it now.

9 (PROCEEDINGS AT SIDE BAR).

10 MR. FLORCZAK: There is no testimony from any witness
11 that my client went to that address. What he does have is that
12 they executed a warrant based on some information at that
13 address. But there is no testimony my client went to that
14 address.

15 THE COURT: All right. He did testify that he had
16 received information that people were at that address.

17 MR. KOLANO: That they had all gone back to that
18 address.

19 Why did you execute the search warrant?

20 Because that's where they went after the shooting.
21 That's where the gun was.

22 MR. FLORCZAK: They didn't specify my client, I don't
23 think, in your question. And I suggest that it is our position
24 he never went back there.

25 THE COURT: I think there is a fair inference from

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1 what he said they, he was referring to all of the people. But
2 you are right, there was no testimony. He was relying upon
3 information provided by others and used that information to
4 obtain a search warrant. So there is no testimony at this
5 proceeding, any direct evidence, first hand testimony, that
6 they were there, that any of them, the four persons allegedly
7 involved here, went to that address. This witness testified
8 that he had received information to that effect. So I think
9 perhaps the way the question was phrased could be, could be
10 misleading.

11 I am going to ask you -- I am going to strike the
12 question and ask you to rephrase it to confirm what he said
13 earlier, that he had received information about them being
14 there.

15 MR. KOLANO: Along those lines, I didn't make an
16 objection because it was already out. It was inappropriate to
17 bring up lack of prior record. Goes back to State versus Rays,
18 50 New Jersey. It's already out.

19 But what I do have a problem is, Mr. Florczak asked
20 the detective if he was aware that Marvin Mathis was a special
21 education student. That may very well be he is a special
22 education student, and that may be coming out based on promise
23 that he is going to testify. But that has a connotation, and
24 connotation for me might be different than they are for
25 everyone else. That requires expert testimony: Because he

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1 can't even understand simplest of words.

2 Unless there is going to be expert testimony, I am
3 going to ask your Honor to give a curative instruction and say
4 While there is some testimony of special education, you know,
5 you should not assume what the meaning of that is. You can
6 only make determinations based, based on the evidence and
7 testimony. And that is something that requires expert
8 testimony.

9 Because that's a kind of reverse inflammatory.

10 MR. FLORCZAK: I think the request is premature at
11 this point.

12 MR. KOLANO: The jury thinking this kid is too stupid
13 to give a statement, and he is more likely to be malleable and
14 be led into this. Because I know I have thoughts about special
15 education, but I have never had any experience so I don't know
16 what it actually is.

17 MR. FLORCZAK: I asked the question based on the fact
18 that he in fact is a special education student.

19 MR. KOLANO: So what is he -- advanced, middle level,
20 low level?

21 MR. FLORCZAK: It goes to the voluntariness of the
22 statement, whether the officer was aware at the time.

23 MR. KOLANO: But that's like saying someone is
24 schizophrenic without putting a doctor that he is
25 schizophrenic.

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1 MR. FLORCZAK: I wouldn't say it's the same thing.
2 But I can bring evidence that he is classified as special ed.
3 That's no problem.

4 MR. KOLANO: I think it should, I think that ought to
5 come from an expert as to what special ed means. What gets you
6 into special ed, what gets you out. What his abilities are.
7 That's got to come from an expert. That can't come from his
8 mom or from him.

9 MR. FLORCZAK: Can't come from school? School can
10 come in, and they classified.

11 MR. KOLANO: That's expert testimony. I am entitled
12 to CV and other stuff.

13 MR. FLORCZAK: I won't call an expert. All I am
14 saying school administrator, custodian of that record saying he
15 is classified as special ed. As to the basis of it, you
16 already have that discovery.

17 MR. KOLANO: But the person who is going to say the
18 classification needs to be an expert, because it has to mean
19 something to be special ed. Otherwise, otherwise can I ask the
20 detective has been qualified as expert in criminal
21 investigation, and he says yes, and then he can give his
22 opinion your guy is guilty? Of course not. That's basically
23 what you are doing. You are getting in through categories and
24 classifications things that are, need to be supported
25 substantively by experts.

KOCZUR - REDIRECT BY KOLANO

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1 THE COURT: You are asking for curative instruction at
2 this point or awaiting what it is that the defense presents?

3 I am not sure what the defense is going to present at
4 this point.

5 MR. KOLANO: I am going, I am asking for curative
6 instruction before the defense ends up putting anything on.
7 But not at this point, because I think we need to sit down,
8 figure out what curative instruction should be. Probably after
9 lunch.

10 MR. FLORCZAK: There is no objection made at the time.

11 THE COURT: This is an issue we will, we don't need to
12 address at this point. At this moment my concern is with
13 reference to the Third Street address. I forgot.

14 MR. KOLANO: Third Street?

15 THE COURT: 224 Third.

16 And I think I am going to sustain the objection to the
17 question on the basis the way it was phrased, because I don't
18 think it is exactly the way the original testimony was. I
19 think it needs -- The original testimony of this witness was
20 that he had received information, not that he knew that they
21 were there. I think the way the question was asked implies
22 that he knows who was at 224 Third Street, as opposed to he
23 received some information that people were at 224. I think
24 that was the original testimony. It was not objected to then.
25 I think this question gives the, certainly allows the

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1 implication or the inference that he knows who was there. He
2 didn't say he knew it. He said he received information.

3 MR. KOLANO: Okay.

4 (SIDE BAR TERMINATED).

5 THE COURT: Last question, as posed objection to the
6 last question posed is sustained as to the form of the
7 question.

8 Mr. Kolano, if you would rephrase the question.

9 Q. Detective, you learned based on information provided
10 to others that the defendant and Antwan Harvey and the girls
11 had gone back to 224 Third Street?

12 A. That is correct.

13 Q. You don't know that from personal knowledge, you
14 weren't there to see them get there; is that correct?

15 A. That is correct.

16 Q. And that was the basis for your later seeking a search
17 warrant?

18 A. Yes, sir.

19 Q. Now, did Mr. Mathis when he originally spoke to you
20 deny any involvement in anything relating to even being a
21 witness to the killing of Mr. Saraiva?

22 A. Yes.

23 Q. Did he later basically tell you that that was a lie?

24 A. Yes.

25 Q. Did he originally indicate to you that he did not make

KOCZUR - REDIRECT BY KOLANO

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1 an admission to Sharlama Brooks?

2 A. Yes.

3 Q. Did he later indicate to you that that was a lie?

4 A. Yes.

5 Q. Did he in the statements that you read indicate and
6 confirm that he had told Sharlama Brooks that he was involved?

7 A. No.

8 Q. Did he call Sharlama Brooks a liar initially?

9 A. Yes.

10 Q. Did he originally tell you about somebody from
11 Carteret other than Antwan being involved?

12 A. Yes.

13 Q. Did he later tell you that was a lie?

14 A. Yes.

15 Q. Did you ever take the time to count up how many lies
16 he told you that day?

17 A. No.

18 Q. And in the first statement there was some talk about,
19 well, Mr. Florczak cross examined about him stopping some
20 robberies or stopping a robbery?

21 A. Yes.

22 Q. Do you recall that. Do you recall in the first
23 statement he indicated that after a robbery was planned and did
24 not go through he walked right by his house?

25 A. Yes.

KOCZUR - REDIRECT BY KOLANO

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1 Q. And did you talk to him about why he then didn't go
2 into his house if he was so concerned about these robberies?

3 A. Yes.

4 Q. And what did he indicate?

5 A. That he wanted to keep walking with them.

6 MR. KOLANO: Thank you. Nothing further.

7 THE COURT: Mr. Florczak.

8 RECROSS EXAMINATION BY MR. FLORCZAK:

9 Q. Which statement was that in, do you recall?

10 A. The first one, I believe, sir.

11 Q. Can you find it for me, please?

12 MR. FLORCZAK: Page seven, first statement, 10th
13 question down.

14 MR. KOLANO: Actually 9th question down.

15 THE WITNESS: Page seven, sir?

16 MR. KOLANO: Yes.

17 A. This is the first statement?

18 Q. Yes. I want to know where he said that he wanted to
19 keep on walking?

20 A. Give me a second, sir. (Pause).

21 "Question: Why didn't you go home?

22 "Answer: He said let's take a walk and he will drop
23 me off back home.

24 "Question: Did you walk past your house?

25 "Yes.

KOCZUR - RECROSS BY FLORCZAK

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1 "Question: Why didn't you go home?

2 "Answer: Because he told me come to the Chinese
3 store, and he dropped me back off."

4 Q. So he went because Antwan told him, right?

5 A. Yes.

6 Q. He didn't say it's because he wanted to walk. It's
7 because Antwan told him to come along to the Chinese store?

8 A. Yes.

9 Q. Now, when I asked you all those questions about yes
10 answers, didn't I ask you where he admitted being involved in
11 the robbery or guilty knowledge of a robbery. Isn't that the
12 questions I asked were the yes answers?

13 A. Sir, I don't --

14 Q. Were any questions he answered regarding being guilty
15 of knowing, being part of a robbery, all yes answers? Were any
16 an explanation by him?

17 A. Yes.

18 Q. Which ones?

19 A. First or second statement?

20 Q. Any statement?

21 A. Sir, just the sentences that assistant prosecutor Kolano
22 read. He read numerous occasions.

23 Q. In any of those statements did he admit some kind of
24 guilt?

25 A. Yes.

KOCZUR - RECROSS BY FLORCZAK

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1 Q. Read me one, any one.

2 A. "Question: What happened between you, Antwan, and the man
3 that was shot?"

4 Q. Can you tell me where you are reading?

5 A. That's the second statement, page five.

6 Q. Go ahead.

7 A. "Answer: We walked up to the guy, Antwan grabbed him and
8 tried going into his pockets. The man then slapped Antwan's
9 hand from going into his pocket. Antwan grabbed the man and
10 the man grabbed Antwan. Then the man threw a punch at Antwan,
11 and Antwan threw a punch back. Then Antwan pushed the man off
12 of him and took the gun and shot him."

13 Q. Okay. What guilt did he admit in that statement?

14 A. Sir, with the context of the whole statement.

15 Q. No. In that answer I want to know what guilt did he
16 admit?

17 A. Sir, I can't answer that question.

18 MR. KOLANO: Context of the hole statement. Otherwise
19 it's misleading.

20 THE COURT: I will allow the witness to answer the
21 question.

22 A. Sir, I can't answer that question just based on one answer.
23 Context of the whole statement that leads me to believe that
24 Marvin Mathis is guilty.

25 Q. In other words, this is your interpretation of the

KOCZUR - RECROSS BY FLORCZAK

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1 answer?

2 A. No, sir. Everything from what happened in the morning to
3 this statement until that answer is not just one sentence, that
4 he, that he answered, sir.

5 Q. So when you say he is making a guilty admission you
6 are also including the other question that the prosecutor read
7 about how did the gun go off, when all three of us were
8 struggling for the gun. You include that?

9 A. That's just one part of the entire days proceedings, sir.

10 Q. Did the prosecutor read that to you?

11 A. Yes, he did.

12 Q. Okay. And do you consider that some kind of an
13 admission of guilt?

14 A. Yes, I do.

15 Q. Okay. Even though he says, before that, And you
16 attempted to help Antwan, is that correct? And the answer was
17 No. I didn't want him to shoot that man. Immediately
18 following that he talks about struggling for the gun. You
19 interpret that as some kind of guilty intent?

20 A. Yes, I do.

21 MR. FLORCZAK: Okay.

22 Q. And in fact your intention in taking the statement,
23 especially the second statement, is to get Marvin Mathis to
24 admit his guilt in this, in this some way, isn't that true?

25 A. Sir, I was always trying to get Marvin Mathis to admit his

KOCZUR - RECROSS BY FLORCZAK

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1 guilt to this.

2 Q. So you entered questioning of Marvin Mathis with the
3 opinion that he was guilty, is that true?

4 A. Sir, I believed he was guilty.

5 Q. When you started questioning him?

6 A. Yes, sir.

7 Q. That's why you questioned him for six, over a period
8 of six or seven hours, not continuously, but over a period of
9 six or seven hours?

10 A. Yes, sir.

11 Q. That's why when he continued to deny his guilt you
12 still kept on questioning him, isn't that true?

13 A. Yes, sir.

14 Q. Did you at any time think that him being fifteen years
15 old he might just say Yes to get it over with?

16 A. Absolutely not. Absolutely not.

17 Q. Did you at any time tell him or his mother that if he
18 answered the questions and signed a statement he could go home?

19 A. That's not true.

20 Q. So you never said that?

21 A. I never said that.

22 MR. FLORCZAK: Thank you. I have nothing further.

23 MR. KOLANO: I do.

24 REDIRECT EXAMINATION BY MR. KOLANO:

25 Q. Did you want him to falsely admit his guilt?

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1 A. No.

2 Q. Was it based on the evidence that you had in the
3 investigation that you reached this conclusion when you answer
4 in response to counsel's question that you always wanted him to
5 admit his guilt?

6 A. Yes.

7 Q. Was it your idea to come up with the fictitious Boz
8 from Carteret or someone else's?

9 A. No.

10 Q. Who came up with the fictitious Boz from Carteret?

11 A. Marvin Mathis.

12 Q. And this was very early on in the oral statement, and
13 then first written statement?

14 A. Yes.

15 Q. He was lying to you that early?

16 A. Yes, sir.

17 Q. That wasn't as a result of hours of questioning, then,
18 was it?

19 A. No, sir.

20 Q. And he started out by lying about being even present,
21 is that correct?

22 A. Yes, sir.

23 Q. That was at the very beginning before hours of
24 questioning?

25 A. That is correct.

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1 Q. Mr. Florczak made reference to six or seven hours of
2 questioning. Was that constant?

3 A. No.

4 Q. Were there actually long periods of breaks?

5 A. Yes, sir.

6 Q. In fact did you testify that one point you left, you
7 went to the prosecutor's office, Detective Furda and Miss
8 Mathis went to go do the consent to search?

9 A. Yes.

10 Q. Lunch break?

11 A. Yes, sir.

12 Q. And did you continue questioning him because of
13 inconsistencies and what you had learned and developed in the
14 investigation?

15 MR. FLORCZAK: I object to the leading nature of the
16 question.

17 THE COURT: Stained.

18 Q. Why did you continue to question him?

19 A. Because Marvin Mathis lied to me in the first statement and
20 other investigators, he continued lying, I believed that he was
21 guilty, and I was trying to catch him in as many lies and
22 trying to get the truth out of him as best I could. ✓

23 Q. Now, if you would refer to page five of the second
24 statement. Mr. Florczak asked you about inculpatory
25 statements, do you recall that, or at least limited, standing

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1 on their own, inculpatory statements?

2 A. Yes.

3 Q. Am I reading accurately:

4 "Question: What did Antwan tell you at this time?

5 "Answer: He was going to rob this guy and asked me
6 to watch out."

7 Now is that more than one word answer.

8 A. Yes, it is.

9 Q. "Who did he want you to watch out for?

10 "Answer: For the cops."

11 Is that more than one word answer?

12 A. Yes, it is.

13 Q. Putting this in context, can you think as a twenty-one
14 year police officer, why someone would watch out for the cops
15 if not to avoid them?

16 A. That's correct.

17 Q. Did you do that for him?

18 Now he gives one word answer, Yes.

19 Is that correct?

20 A. Yes, it is.

21 Q. That question lend itself to yes or no answer?

22 A. Yes, it does.

23 Q. Did Mr. Mathis indicate prior to this time in the
24 writing and in the oral that he knew that he could either, that
25 he had the opportunity to tell a lie if he wanted to?

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1 A. Yes.

2 Q. And he knew that he could say No when he wanted to?

3 A. That's correct.

4 Q. And in fact Mr. Florczak pointed out couple of times
5 he said No, he wasn't involved in that, correct?

6 A. That's correct.

7 Q. So were you putting those words in his mouth?

8 A. No, I was not.

9 Q. Even though it was your opinion that he was guilty,
10 based on your investigation, you still allowed him to deny his
11 involvement?

12 A. Yes.

13 Q. Why?

14 A. The more lies he was telling the guiltier he was looking to
15 me.

16 Q. Were they his words or yours?

17 A. His words.

18 MR. KOLANO: Nothing further.

19 RECROSS EXAMINATION BY MR. FLORCZAK:

20 Q. Detective, you said you were convinced when you
21 started questioning him based on your investigation, is that
22 true?

23 A. Yes, sir.

24 Q. What did the investigation consist of to that point as
25 to Marvin Mathis, except for the statement of Miss Brooks?

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1 A. His own words, sir.

2 Q. Well, no. You said you were convinced before you
3 started questioning him.

4 A. No, sir. As we were questioning him.

5 Q. How long? In five minutes?

6 A. Very short. Within five minutes. Yes.

7 Q. But you had nothing prior to questioning him in the
8 form of an investigation involving him other than Miss Brooks'
9 statement, is that correct?

10 A. Just Sharlama Brooks at that time, sir.

11 Q. You hadn't even completed her statement at that point.

12 A. Her statement was completed before I started questioning
13 Marvin Mathis, sir.

14 MR. FLORCZAK: Okay. That's right.

15 Thank you. That's all I have.

16 MR. KOLANO: Nothing further.

17 THE COURT: Officer, you may step down.

18 THE WITNESS: Thank you.

19 THE COURT: Watch your step as you step off.

20 Ladies and gentlemen, we are going to break now for
21 lunch. I want to remind you not to engage in any discussions
22 regarding the case among yourselves or with others. I will ask
23 that you retire to the jury room, collect whatever personal
24 belongings you have, and wait for the officer to release you
25 for lunch. And then return in one hour.

- COLLOQUY -

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1 (Jury withdrew from the courtroom.)

2 MR. KOLANO: Your Honor, before we break for lunch can
3 we have five minutes for legal argument?

4 Perhaps if I can approach first off the record.

5 (Side bar off the record).

6 THE COURT: The jurors can be released.

7 All the jurors are clear from the courtroom.

8 Mr. Kolano.

9 MR. KOLANO: Your Honor, it's my intention to call
10 Janice Sutton. Obviously, from the testimony of Sharlama
11 Brooks it will be on its face hearsay testimony. (It is my
12 position that Sharlama Brooks has already satisfied the
13 foundational requirements for an excited utterance. The
14 exciting events was admission by this defendant that he was
15 involved in a killing of, although not by name, of Mr. Saraiva
16 and she indicated she reacted to this by crying, she was very
17 upset. She had been crying with her friends so much to the
18 point where she was told to get out of the classroom. And
19 that's where she sees Mrs. Pridgin who is a security officer.
20 Still she is in the state of crying. She gets to the point,
21 fifteen minutes I think was her testimony, where she sees Miss
22 Sutton, a counselor, and there she talks to Miss Sutton. She
23 is also in the state of excitement by her own testimony, and
24 she is crying when she indicates what is going on.

25 The exciting event is being told that. That is a

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1 legitimate exciting event.

2 This is not a question and answer interrogation that
3 counsel may suggest that it is. It's Miss Sutton simply saying
4 What's bothering you? Why are you crying?

5 I have spoken to Miss Sutton very briefly. I have
6 never met her in person. But basically what she told me is
7 she, she, that Sharlama Brooks was so upset she thought she had
8 been raped or something like that.

9 I am simply saying before I bring Miss Sutton and pull
10 her out of the high school during these very important days of
11 the last days of school, I am asking the court for a ruling
12 based on Sharlama Brooks' testimony alone as to the foundation
13 for having Miss Sutton come in to testify as to what Sharlama
14 Brooks told her about what the defendant said.

15 Obviously, it's a double hearsay, and obviously a
16 double hearsay exception. An admission as it comes out of the
17 mouth of Marvin Mathis and an excited utterance as it comes out
18 of the mouth of Sharlama Brooks.

19 MR. FLORCZAK: Judge, I would like more time to
20 address this issue. I would note in several of the cases cited
21 whether the statement was made voluntarily or in response to a
22 question is a factor to be considered. And this is not
23 something that was just voluntarily stated. This I believe
24 will come out that it was as a result of a question.

25 I think it makes a difference whether the shock is a

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1 result of observing the particular event or as a result of
2 being told of something.

3 Now, I understand the rule has been amended. Prior to
4 the amendment to the rule being told of an event was
5 insufficient to qualify as an excited utterance. Now it may.
6 Still the strict requirements of the initial rule haven't
7 changed.

8 I would like to look into what the present perception
9 requirement of the rule is, judge. They say it's the same now
10 as it was before. Despite the fact that now being told
11 something would make a difference. And I simply haven't had
12 time to look into it, judge.

13 THE COURT: I will give you an opportunity to do that.
14 I am not going to rush into this. It's just the rule does now
15 read a statement relating to a startling event, which certainly
16 seems to leave open an interpretation that a person need not
17 actually experience the startling event but rather somehow
18 receive information relating to the startling event.

19 MR. FLORCZAK: That's correct, judge.

20 THE COURT: So I think, I will give you an opportunity
21 to take a look at that.

22 Mr. Kolano, we are not going to be able to resolve
23 this prior to the lunch break. So it may, may involve some
24 rescheduling or shuffling of witnesses. I don't know how
25 that's going to impact on the schedule.

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1 While we are talking about scheduling, are either
2 April or Renee Diggs anticipated to be reached today?

3 MR. KOLANO: Both. April Diggs will be first.

4 Actually, I am going to have one witness before April,
5 and that may also involve a legal determination by the court.

6 As I indicated in my letter, there are some adoptive
7 admissions issues, and this next witness Migdalia Rodriguez
8 will fall into that category.

9 MR. FLORCZAK: I don't know, Rodriguez?

10 MR. KOLANO: Stephen Owens, the woman at 224.

11 MR. FLORCZAK: I obviously will object to her
12 testifying about somebody else talking about doing the robbery.
13 Judge, I think that's what the testimony will be.

14 MR. KOLANO: The basic issue, she is going to say that
15 one of the -- both Marvin and Antwan had the gun when they came
16 back afterwards. Which is something that she witnessed.

17 Adoptive admission will come in that the four of them
18 came back together, and that one of the guys said we had to
19 shoot him, but it was in the presence of all four of them, and
20 then in addition to the four of them Migdalia overheard it.

21 So I would say that's a statement in furtherance of
22 the conspiracy and, two, it's an adoptive admission. Because
23 they are all here, We had to shoot him, and one of the women
24 said We didn't get any money. That's a statement attributal to
25 all of the conspirators because I would argue conspiracy is

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1 still going on because it's flight afterwards or getting away
2 or concealing themselves from the crime by going indoors.

3 And, two, that it is adoptive admission because one is
4 speaking for all of them and nobody else -- and we have had
5 this argument at side bar in another context -- nobody is
6 saying, No, No, what are you talking about, We had to shoot
7 him? We didn't have to shoot anybody. What do you mean we
8 didn't get any money? We didn't do robbery, why would we be
9 concerned about money?

10 That's my legal basis for getting what Migdalia would
11 say. And obviously first hand after they come in the house
12 afterwards together and the gun.

13 That just puts everyone on notice for the lunch break.

14 THE COURT: All right. We will address that after the
15 lunch break also. All right.

16 (Luncheon recess).

17 (CONTINUED ON AFTERNOON SESSION VOLUME)

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- COLLOQUY -

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C E R T I F I C A T E

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